

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 03-31304

ADV No. 04-_____

Alan Curtis Gruidl and Jacqueline Ann Gruidl,

Debtors.

Randall L. Seaver, Trustee,

Plaintiff,

COMPLAINT

vs.

Gregory A. Wade, Richard T. Wade and
Two Brothers Entertainment, Inc.,

Defendants.

Randall L. Seaver, Trustee (“Trustee”) of the Bankruptcy Estate of Alan Curtis Gruidl and Jacqueline Ann Gruidl, (“Debtors”) for his Complaint against Gregory A. Wade, Richard T. Wade and Two Brothers Entertainment, Inc. (“Defendants”), states and alleges as follows:

1. The Trustee is the duly appointed Chapter 7 Trustee of the Bankruptcy Estate of the Debtor.
2. This bankruptcy case was commenced on February 25, 2003, by the filing of a voluntary Chapter 7 petition.
3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S.C. §323.

5. On information and belief, Defendant Gregory A. Wade is an individual residing in the State of Arizona.

6. On information and belief, Defendant Richard T. Wade is an individual residing in the State of Minnesota.

7. On information and belief, Defendant Two Brothers Entertainment, Inc. is a Minnesota corporation principally owned by Richard T. Wade and Gregory A. Wade.

8. On or about June 5, 1998, the Debtor, Alan Gruidl, transferred certain assets, properties, and the business known as the “Albatross” to The Albatross, Inc., Scott Michels, Ann Michels, and Steven Hruby, (hereinafter, “the Michels Group”).

9. Pursuant to a Contract Assumption Agreement dated December 1, 2000 (“Agreement”), Defendants acquired from the Michels Group assets and obligations relating to the businesses known as “The Albatross” and “The Grind Coffeehouse” (“Assets”). The Agreement is attached as Exhibit 1. Defendants acquired the Assets and assumed obligations on four promissory notes originally between the Michels Group and the Debtor, Alan Gruidl.

COUNT ONE: LEASEHOLD IMPROVEMENT NOTE

10. Plaintiff realleges and reaffirms paragraphs 1 through 9 above.

11. Pursuant to the Agreement, Defendants assumed a Promissory Note dated June 5, 1998, in the principal amount of \$115,000, and agreed to pay Alan Gruidl \$107,014.53 for leasehold improvements to commercial property at 1608 Warren Street, Mankato, Minnesota, in equal monthly installments of \$1,653.48 with 10.71% interest per annum commencing on December 1, 2000 (“Leasehold Improvement Note”). Agreement at 2.1(a), Exhibit I at 3. The Leasehold Improvement Note is attached to the Agreement as Exhibit C.

12. Gregory Wade and Richard Wade personally guaranteed the obligations under the Leasehold Improvement Note. *See* Agreement, para. 2.3, Exhibit 1 at 4.

13. Defendants failed to make the monthly payments on the Leasehold Improvement Note after March 1, 2001 and are in default on the Leasehold Improvement Note.

14. On information and belief, Alan Gruidle gave notice of the default to Defendants as required by the Leasehold Improvement Note by letter dated June 1, 2001, attached as Exhibit 2.

15. Plaintiff is entitled to recover outstanding principal and interest of \$110,914.79 or more as of May 31, 2001, plus interest to February 25, 2003 of \$21,697.32, for a total of \$132,612.11 or more.

COUNT TWO: EQUIPMENT NOTE

16. Plaintiff realleges and reaffirms paragraphs 1 through 15 above.

17. Pursuant to the Agreement, Defendants assumed the obligations of a Promissory Note dated June 5, 1998 for equipment , with a principal amount of \$150,000 and agreed to pay Alan Gruidl the balance owed of \$139,584.27 in equal monthly installments of \$2,156.71 with 10.71% interest per annum commencing on December 1, 2000 (“Equipment Note”). Agreement at 2.1(b), Exhibit I at 3. The Equipment Note is attached the Agreement as Exhibit D.

18. Gregory Wade and Richard Wade personally guaranteed the obligations under the Equipment Note. *See* Agreement, para. 2.3, Exhibit 1 at 4.

19. On information and belief, Defendants failed to make monthly payments on the Equipment Note after March 1, 2001 and are in default on the Equipment Note.

20. Alan Gruidle gave notice of the default to Defendants as required by the Equipment

Note by letter dated June 1, 2001, attached as Exhibit 2.

21. Plaintiff is entitled to recover outstanding principal and interest of \$144,644.48 or more as of May 31, 2001, plus interest to February 25, 2003 of \$28,295.58, for a total of \$178,940.06 or more.

COUNT THREE: NON-COMPETE NOTE

22. Plaintiff realleges and reaffirms paragraphs 1 through 21 above.

23. Pursuant to the Agreement, Defendants assumed a Promissory Note dated June 5, 1998, in the principal amount of \$317,166 and agreed to pay Alan Gruidl \$224,659.25 for the Non-Compete Agreement ("Non-Compete Note") in equal monthly installments of \$2,643.05 with no interest accruing, commencing on December 1, 2000. Agreement at 2.1(c), Exhibit I at 3. The Non-Compete Note is attached to the Agreement as Exhibit E.

24. Gregory Wade and Richard Wade signed a Guaranty for the Non-Compete Note, attached as Exhibit 3.

25. Defendants failed to pay the monthly payments on the Non-Compete Note after March 1, 2001 and are in default on the Non-Compete Note.

26. On information and belief, Alan Gruidl gave notice of the default to Defendants as required by the Non-Compete Note by letter dated June 1, 2001, attached as Exhibit 2.

27. Plaintiff is entitled to recover outstanding principal of at least \$221,630.16.

COUNT FOUR: WELLS FARGO NOTE

28. Plaintiff realleges and reaffirms paragraphs 1 through 27 above.

29. Pursuant to the Agreement, Defendants assumed Alan Gruidl's obligation to

Norwest Bank f/k/a Wells Fargo Bank for a note in the principle amount of \$100,000 (“Wells Fargo Note”). *See* Agreement at para. 3.3, Exhibit 1 at 4.

30. Defendants failed to the make monthly payments due on the Wells Fargo Note and are in default on the Wells Fargo Note. As a result of Defendants’ default, on information and belief, the Debtor, Alan Gruidl paid Wells Fargo Bank \$8,297.99 in accrued interest.

31. On or about June 1, 2001, Alan Gruidl provided Defendants written notice of default of the Wells Fargo Note. The written notice is attached as Exhibit 2.

32. Plaintiff is entitled to accelerate the Wells Fargo Note and recover outstanding principle of \$100,000 and interest of \$8,297.99 as of November 19, 2001, plus 23.28 per day in accrued interest to February 25, 2003, or \$11,078.76, for a total of \$119,376.75 or more.

COUNT FIVE: SUBLEASE

33. Plaintiff realleges and reaffirms paragraphs 1 through 32 above.

34. The Defendants Gregory A. Wade and Richard T. Wade executed a Sublease Agreement dated December 1, 2000 with #1 Sun, Inc. and Brandie-Alexander, Inc., corporations owned and controlled by Alan Gruidl. *See* Exhibit 4. The Sublease Agreement obligated Defendants to pay rent to Alan Gruidl. The original Lease was between Roger W. Peters, landlord, and Brandie-Alexander, Inc., tenant, and was personally guaranteed by Alan Gruidl.

35. Under the Sublease Agreement, Defendants assumed the Lease for the premises located at 1608 Warren Street, Mankato, Minnesota and assumed all obligations thereunder, including but not limited the payment of monthly rent, which rent was, on information and belief, \$7,312 per month in the year 2001.

36. On information and belief, Defendants breached the terms of the Sublease Agreement

by failing to pay rent for four months or more.

37. On information and belief, on June 1, 2001, Alan Gruidl gave Defendants notice of the default under the Sublease Agreement. *See* Exhibit 2.

38. Plaintiff is entitled to recover past due rents in the amount of \$29,249 or more.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order:

1. For Judgment against Defendants, jointly and severally, for the breach of the Leasehold Improvements Note, for principal and interest of \$110,914.79 or more as of February 25, 2003;

2. For Judgment against Defendants, jointly and severally, for breach of the Equipment Note, for principal and interest of \$178,940.06 or more as of February 25, 2003;

3. For Judgment against Defendants, jointly and severally, for breach of the Non-Compete Note in the principal amount of \$221,630.16 as of February 25, 2003;

4. For Judgment against Defendants, jointly and severally, for breach of the Wells Fargo Note in the principal amount of \$100,000 and accrued interest of \$19,376.75 as of February 23, 2003;

5. For Judgment against Defendants, Gregory A. Wade and Richard T. Wade, jointly and severally, for breach of the Sublease Agreement in the amount of at least \$29,249 or more; and

6. For such other and further relief as the Court deems just and equitable.

FULLER, SEAVER & RAMETTE, P.A.

Dated: April 8, 2004

By: /e/ Andrea M. Hauser

Randall L. Seaver 152882

Andrea M. Hauser 207469

12400 Portland Avenue South, Suite 132

Burnsville, MN 55337

(952) 890-0888

Attorneys for Randall L. Seaver

CONTRACT ASSUMPTION AGREEMENT

THIS CONTRACT ASSUMPTION AGREEMENT (this "Agreement"), dated as of the day 1st of December, 2000, by and between The Albatross, Inc., a Minnesota Corporation, Scott Michels, individually, Ann Michels, individually, and Steven Hruby, individually ("Transferors") and Two Brothers Entertainment, Inc., a Minnesota Corporation, Gregory A. Wade, individually, and Richard T. Wade, individually ("Transferees"), and Alan C. Gruidl ("Third Party Beneficiary")

WITNESSETH

WHEREAS, Scott Michels, Ann Michels and Steven Hruby entered into a contract to purchase and operate The Albatross, Inc., located at 1608 Warren Street, Mankato, Minnesota from Alan C. Gruidl, under that certain Asset Purchase Agreement dated the 5th day of June, 1998 ("The Contract"), a copy of the Asset Purchase Agreement is attached hereto as Exhibit A; and

WHEREAS, Scott Michels, Ann Michels and Steven Hruby transferred the acquired assets to The Albatross, Inc., a copy of the Bill of Sale transferring the assets is attached hereto as Exhibit B

WHEREAS, Scott Michels, Ann Michels, and Steven Hruby have certain Promissory Notes due and owing to Alan C. Gruidl, a copy of the promissory notes are attached hereto as Exhibits C, D, E, and F; and

WHEREAS, Transferors have an obligation to Alan C. Gruidl for payment of 5% of the annual gross revenue in excess of \$875,000, with the benchmark of \$875,000 increasing each year in the amount of \$26,250 per year for ten years; and

WHEREAS, Transferors are desirous to transfer and assign to Transferees all of the assets, properties and business of The Albatross, Inc. located in Mankato, Minnesota, pursuant to and in accordance with the terms and conditions of this Agreement and no longer wish to operate The Albatross; and

WHEREAS, Transferees wish to acquire the assets, properties and business of The Albatross, Inc., and to assume certain liabilities of Transferors relating to The

EXHIBIT 1

Albatross, Inc. pursuant to and in accordance with the terms and conditions of this Agreement;

WHEREAS, Transferors wish to enter an assignment and assumption agreement of The Contract with Transferees, and

WHEREAS, Alan C. Gruidl is desirous to consent to the assignment of said obligations pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the parties hereto hereby agree as follows:

TRANSFER OF ASSETS

Transfer of Assets

Transferred Assets subject to the terms and conditions set forth in this Agreement, Transferors transfer and convey to Transferees, and Transferees acquire and accept from Transferors, all of the assets, properties, rights and claims of The Albatross, Inc. of every type and description, real, personal and mixed, tangible and intangible, wherever located and whether embodied in the books and records of the Transferors, including cash, collectively "Transferred Assets" as identified in the list of assets attached hereto as Exhibit G.

2 Excluded Assets. The assets transferred, conveyed, set aside and delivered to Transferees shall exclude the following assets:

- (a) all casualty, liability and life insurance policies owned or obtained by the Transferors on behalf of The Albatross, Inc.
- (b) the corporate minute books, stock registers and other records of the Transferors; and
- (c) the income tax records covering transactions of the Transferors occurring prior to Closing.

3 Transferees hereby agree to assume all obligations, liabilities and debts as specified in The Contract by and between Brandie-Albatross, Inc., Minnesota Corporation and Scott Michels, Ann Michels, and Steven Hruby dated

June 1998 Transferee hereby represents and warrants that Transferees have the authority to execute and deliver this Agreement. Transferees hereby assent and acquiesce to paragraphs 4.1 and 4.2. of The Contract attached hereto as Exhibit A.

Transferors hereby assign and transfer all assets as identified in the Bill of Sale attached hereto as Exhibit G

CONSIDERATION

2. Transferees shall assume and pay the promissory note owned to Alan C. Gruidl by Scott Michels, Ann Michels, and Steve Hrubc enumerated as follows

Transferees shall assume the promissory note dated June 1998, with the original principal amount of \$100,000. The parties agree that the note has a current balance of \$107,150 and is payable to Alan C. Gruidl in equal monthly installments per the terms of the note. Attached Exhibit C is a copy of the original promissory note owed to Alan C. Gruidl.

Transferees shall assume the promissory note dated June 1998 with the original principal amount of \$50,000. The parties agree that the note has a current balance of \$51,500 and is payable to Alan C. Gruidl in equal monthly payments per the terms of the note. Attached Exhibit D is a copy of the promissory note owed to Alan C. Gruidl.

Transferees shall assume the promissory note dated June 1998, with the original principal amount of \$366. The parties agree that the current balance is \$224.25 and is payable in equal monthly payments to Alan C. Gruidl. Transferors shall execute all necessary documents to assign the promissory notes to Transferees. Attached Exhibit E is a copy of the promissory note owed to Alan C. Gruidl.

3. Transferees shall pay to Alan C. Gruidl 5% of the annual gross revenue in excess of \$2,500. The benchmark of \$2,500 shall be increased by the amount of \$2.25 per year so that the benchmark in the eighth year would be \$20.25. The amounts shall be so paid to Alan C. Gruidl in a period of eight years on a prorated monthly basis.

beginning January 10, 2001, and Alan C. Gruidl shall be entitled to audit the revenue figures at reasonable times to confirm the accuracy of the payment figures.

2.3 Transferees agree that they will personally guarantee all promissory notes and obligations pursuant to the terms herein contemplated. All promissory notes provide for acceleration in the event of default on said notes and shall further provide that a default on one note shall be considered a default on all obligations, including obligations under the sublease contemplated herein. Attached as H, I, and J are the personal guarantees for the promissory notes which Transferees agree to sign at Closing.

2.4 Transferors agree that they shall remain as personal guarantors on all promissory notes and obligations pursuant to the terms on The Contract dated June 5, 1998 by and between Alan C. Gruidl and Scott Michels, Ann Michels, and Steve Hruby. In the event of default by Transferees, Transferors shall be personally liable and agree to assume the payments of the promissory notes and obligations contemplated herein.

Consent to Assignment

3.1 Upon the terms and subject to the conditions contained in this Agreement, Transferees shall pay to Alan C. Gruidl the sum of \$3,000, in addition to the assumption of the Assumed Liabilities in full consideration for his consent to the assumption and assignment of The Contract entered into by and between Alan C. Gruidl and Scott Michels, Ann Michels, and Steve Hruby. In addition, Transferees shall further pay to Alan C. Gruidl the sum of \$25,000 within 60 days of execution of this Agreement.

3.2 Transferees agree to pay to Alan C. Gruidl a monthly amount not to exceed \$500 for his personal health care insurance coverage for him and his family until the note at Wells Fargo Bank, Mankato, Minnesota is paid in full.

3.3 Transferees agree to assume responsibility for the obligation of Alan C. Gruidl to Wells Fargo Bank, Mankato, Minnesota for the current note which the parties agree that the balance of which at the date of this Agreement shall be \$100,000. Transferees shall pay to Wells Fargo Bank, Mankato, Minnesota monthly payments according to the terms of the note. The payments shall begin on January 10, 2001, and be payable on the 10th day of each month thereafter until paid in full.

3.4 Transferors shall pay to Alan C. Gruidl any and all amounts past due and owing, which would bring The Contract current as of December 31, 2000. Transferors shall have the balance paid in full no later than December 31, 2000.

REPRESENTATIONS AND WARRANTIES OF TRANSFERORS

4.1 Transferors make all representations and warranties to Transferees expressly made in The Contract dated 12/29/99 by and between Brandie-Alexander, Inc., Minnesota Corporation and Sco Michels, Ann Michels, and Hruby attached hereto as Exhibit A.

4.2 Transferors have the power and authority to transfer the assets specified in this Agreement free and clear of all liens and encumbrances, other than the liens in favor of Alan C. Gruidl.

4.3 Transferors represent that as of the date hereof, there are no judgments, assessments, liens, actions or proceedings pending against Transferor anywhere which are not covered by insurance and Transferor specifically assumes liability for any judgments, assessments, liens, actions or proceedings, and will hold harmless Transferees from any and all such conditions.

Alan C. Gruidl shall be responsible for any representations and warranties made by transferors to Transferees and makes representations and warranties.

CLOSING DATE AND CONDITIONS

Performance of Agreements, Instruments of Transfer. Transferors shall have fully performed in all material respects all obligations, agreements, conditions and commitments required to be fulfilled by Transferors prior to Closing Date and shall have tendered the documents, instruments and certificates required hereunder.

4.2 Consents, etc. All authorizations, consents and approvals of any and all governmental or regulatory authorities in connection with consummation of the Closing shall have been obtained. The full form and effect of the Transferor shall have obtained consent for the current use of the space used by "The Albatross" and for the sublease from the Transferor. Liability to the Transferees of his transaction shall consist of the assets of The Albatross, Inc. Attached Exhibit K is a copy of the sublease agreement. Transferees shall be bound by the terms of the sublease.

Transferor shall assign the current Liquor License to Transferees and shall obtain any and all necessary consents or approval from governmental regulatory authorities and shall assist as necessary in the assignment of such license. Transferors shall allow Transferees to operate The Albatross, under the current liquor license until Transferees have obtained title and transfer of said liquor license.

CLOSING DOCUMENTS

Transferors' Obligations. On the Closing Date, Transferor shall deliver to Transferees physical possession of all tangible Purchased Assets and, shall execute and deliver to Transferees the following:

Resolution. Copies of resolutions of Transferors certified by the Secretary Assistant Secretary of Transferor authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

Bill of Sale. A duly executed bill of sale, duly executed by Transferors, in form and substance reasonably satisfactory to counsel for Transferees, sufficient to convey and transfer and assign to Transferees all right, title, and interest of Transferors in and to the Purchased Assets free and clear of liens, claims, encumbrances and security interests in accordance with this Agreement. Attached as Exhibit G is the Bill of Sale for the assets of The Albatross, Inc.

SECURITY

Security Interest. Transferees agree to execute all documents necessary to perfect security interest in all of the assets acquired from The Albatross, Inc. including but not limited to inventory, equipment and accounts receivable, whether presently owned or acquired in the future in favor of Alan C. Gruidl, his successors and assigns until such time as all contracts between Transferors, Transferees, and Alan C. Gruidl are fulfilled. Attached as Exhibit L is a copy of the Security Agreement.

DEFAULT

8 Default by Transferees. In the event that the Transferees become in default on any of the promissory notes referenced in this Agreement, Transferors shall have the first right to reacquire the assets being acquired herein, at no additional cost to transferors.

Alan C. Gruidl shall cause the business of The Albatross, Inc. to revert to Transferors if Transferees default on this Agreement.

The Albatross, Inc.
By: [Signature]
Its: PRESIDENT

[Signature]
Scott Michels

[Signature]
Ann Michels

[Signature]
Steven Hruby

Two Brothers Entertainment, Inc.
By: _____
Its: _____

Gregory A. Wade

[Signature]
Richard T. Wade

[Signature]
Alan C. Gruidl

DEC-01-00 FRI 18:00

P. 02/02

Gruidl shall cause the business of The Albatross, Inc. to revert to Transferees if Transferees default on this Agreement.

The Albatross, Inc.

By: _____

Its: _____

Scott Michels

Ann Michels

Steven Hruby

Two Brothers Entertainment, Inc.

By: GREGORY A. WADE

Its: PRESIDENT



Gregory A. Wade

Richard T. Wade

Alan C. Gruidl

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that Scott R. Michels, Ann M. Michels, and Steven C. Hruby, of the County of Nicollet and State of Minnesota, hereinafter referred to as "Sellers," in consideration of the sum of One Dollar and other good and valuable consideration, to them in hand paid by The Albatross, Inc., a Minnesota Corporation, of the County of Blue Earth, and State of Minnesota, hereinafter referred to as "Buyer," the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the Buyer and its successors and assigns, forever, the following described goods, chattels, and personal property, to-wit:

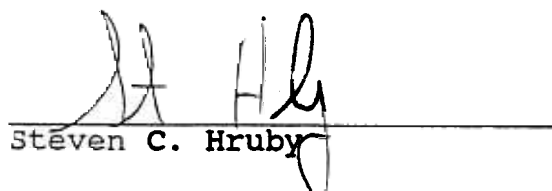
SEE ATTACHED LIST

TO HAVE AND TO HOLD THE SAME, unto the Buyer, its successors and assigns, forever. And the Sellers for themselves, their heirs, executors, and administrators, covenants and agree to and with the Buyer, its successors and assigns, to warrant and defend the sale of said goods, chattels, and personal property hereby made, unto the Buyer, its successors and assigns, against all and every person and persons whomsoever, lawfully claiming or to claim the same.

IN TESTIMONY WHEREOF, the Sellers have hereunto set their hands this 5th day of June, 1998.


Scott R. Michels


Ann M. Michels


Steven C. Hruby

EXHIBIT

Inventory: On Hand-Bar

50 Welded Steel Tables
100 Bar Stools
40 Padded Wall Benches
8 TV's & mounts
1 Big Screen Projection TV (1 TV, 2 Screens)
1 Main Bar (cabinet)
1 Shooter Bar
1 Outdoor Bar
1 Baja Bar
1 Tap System
3 Glasswashers
4 Smoke Eaters
1 Dance Light Systems
1 Sound System & DJ booth,
2 CD's,
2 Turntables,
2 AMPS,
15 Speakers
2 Bass Sub's,
1 Mixer
5 Micros Tills & Computer (Subject to lease which Buyers
hereby specifically assume and agree to pay)
1 Computer
1 Office Computer
1 Office Safe
4 Desks

Bar Inventory

- 1 Bag in a Box Soda System
 - 1 Money Counter
 - 1 Surveillance System (2 Monitors, 2 Recorders, 10 Cameras)
 - 1 Display Cooler
 - 1 Bar Back Cooler
 - 1 Bar Back Cooler
 - 1 Bar Back Cooler
 - 1 Bar Back/Keg Cooler
 - 1 Stainless Bar Back/Sink (50')
 - 1 Scotsman Ice Cuber
 - 1 Scotsman Ice Bin
 - 1 Minolta Copier
 - 1 Washing Machine
-

Kitchen Inventory

- 1 Meat Slicer
- 2 Frialator
- 1 Commercial Range
- 1 Broiler
- 1 Hood
- 1 Fire Suppression
- 1 Cart/Casters
- 1 Stainless Prep. Counter, Warmer, Triple Sink, etc.(20')
- 2 Stainless Can Rack

tai Wash Rack
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 Stain Mi Pots/Pans (numerous)
 ispo
 Arr ho Warmer
 Bunnomati
 W in Co
 Walk in Cooler
 Fr
 R ig t

C Shop ry

2 Wood Ladderback Chairs

it Ch

Booth

Bar

B ct

60 China Set ing

S y

PROMISSORY NOTE

DATED: June 5, 1998

\$115,000

For value received, Scott R. Michels, Ann M. Michels, and Steven C. Hruby, (Debtors), hereby promise to pay to the order of Alan C. Gruidl, the principal sum of one hundred fifteen thousand dollars (\$115,000), together with interest from the date hereof on the unpaid principal balance remaining at the rate of ten and 71/100 percent (10.71%) per annum payable in 120 monthly payments from the date hereof.

Subject to the other provisions hereof, payment of interest and principal shall be made monthly in the amount of \$1,653.48 per month, commencing on January 10, 1999 and each and every January 10th thereafter until paid in full

This note shall be binding upon the makers, their successors and assigns. The holder of this note may at its option without notice declare this note immediately due and payable for the entire unpaid principal hereof upon or at any time after the occurrence of any of the following events: any default in the payment of this note; any default under the terms or conditions of any security agreement or other note, obligation, instrument, undertaking or agreement concurrently herewith or heretofore or hereafter given to or acquired and held by the holder hereof to which any maker, co-maker, endorser, surety or guarantor hereof is a party; if the holder hereof deems himself insecure; or if there is such a change in the condition or affairs, financial or otherwise, of any maker, co-maker,

EXHIBIT

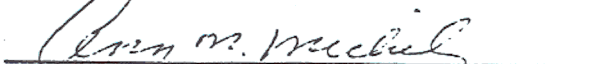
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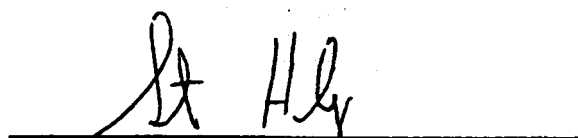
endorser, surety or guarantor hereof as in the option of the holder hereof increases the risk of repayment.

Each maker, co-maker, endorser, surety and guarantor hereof jointly and severally agrees to pay this note and guarantees payment hereof and waives demand, presentment, protest and notice of dishonor, and consents to any extensions and renewals hereof without notice, and consents to the release by the holder hereof with or without consideration of any of them, and exonerates the holder hereof from all duty and obligation to make demand on anyone for payment of any collateral now or hereafter securing this note or to give notice to anyone of non-payment thereof or to collect or sell the same and consents to the extension renewal, exchange, surrender or release by the holder hereof with or without consideration of any such collateral, and agrees that when or at any time after this note becomes due the holder hereof may, without notice, offset or charge this note against any account then maintained by any of them with the holder hereof or then existing between any of them and the holder hereof and to pay any deficiency, and agrees in case of any default to pay all costs of collection, including reasonable attorneys fees, and the maximum interest or late charges permitted by law.

Should the holder of this note grant a further extension of any payments hereunder, it shall not be considered as a waiver of this note nor shall it release the obligation of payment herein; time is of the essence herein.


Scott R. Michels


Ann M. Michels


Steven C. Hruby

PROMISSORY NOTE

DATED: June 5, 1998

\$150,000

value received, Scott R. Michels, Ann M. Michels, and Steven C. Hruby , (Debtors), hereby promise to pay to the order of Alan C. Gruidl , the principal sum of one hundred fifty thousand (\$150,000) dollars, together with interest from the date hereof on the unpaid principal balance remaining at the rate of ten and 71/100 (10.71%) per annum in monthly payments of \$2,156.71 for a period of 120 months beginning January 10, 1999 and each and every January 10th thereafter until paid in full

note shall be binding upon the makers, their successors and assigns. The holder of this note may at its option without notice declare this note immediately due and payable for the entire unpaid principal hereof upon or at any time after the occurrence of any of the following events: any default in the payment of this note; any default under the terms or conditions of any security agreement or other note, obligation, instrument, undertaking or agreement concurrently herewith or heretofore or hereafter given to or acquired and held by the holder hereof to which any maker, co-maker, endorser, surety or guarantor hereof is a party; if the holder hereof deems himself insecure; or if there is such a change in the condition or affairs, financial or otherwise, of any maker, co-maker endorser, surety or guarantor hereof as in the option of the holder hereof increases the risk of repayment.

Each maker, co-maker, endorser, surety and guarantor hereof jointly and severally agrees to pay this note and guarantees

EXHIBIT

D

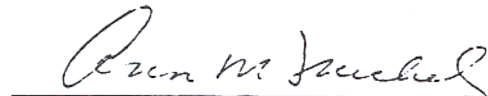
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payment hereof and waives demand, presentment, protest and notice of dishonor, and consents to any extensions and renewals hereof without notice, and consents to the release by the holder hereof with or without consideration of any of them, and exonerates the holder hereof from all duty and obligation to make demand on anyone for payment of any collateral now or hereafter securing this note or to give notice to anyone of non-payment thereof or to collect or sell the same and consents to the extension, renewal, exchange, surrender or release by the holder hereof with or without consideration of any such collateral, and agrees that when or at any time after this note becomes due the holder hereof may, without notice, offset or charge this note against any account then maintained by any of them with the holder hereof or then existing between any of them and the holder hereof and to pay any deficiency, and agrees in case of any default to pay all costs of collection, including reasonable attorneys fees, and the maximum interest or late charges permitted by

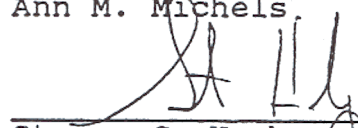
Should the holder of this note grant a further extension of any payments hereunder, it shall not be considered as a waiver of this note nor shall it release the obligation of payment herein; time is of the essence herein.



Scott R. Michels



Ann M. Michels



Steven C. Hruby

PROM OR DOT

DA ED Jun 5

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ym
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EXHIBIT


E

with or without consideration of any of them, and exonerates the holder hereof from all duty and obligation to make demand on anyone for payment of any collateral now or hereafter securing this note or to give notice to anyone of non-payment thereof or to collect or sell the same and consents to the extension renewal, exchange, surrender or release by the holder hereof with or without consideration of any such collateral, and agrees that when or at any time after this note becomes due the holder hereof may, without notice, offset or charge this note against any account then maintained by any of them with the holder hereof or then existing between any of them and the holder hereof and to pay any deficiency, and agrees in case of any default to pay all costs of collection, including reasonable attorneys fees, and the maximum interest or late charges permitted by law.

Should the holder of this note grant a further extension of any payments hereunder, it shall not be considered as a waiver of this note nor shall it release the obligation of payment herein; time is of the essence herein.



Scott R. Michels



Ann M. Michels



Steven C. Hruby

PROMISSORY NOTE

DATED: June 5, 1998

\$100,000

For value received, Scott R. Michels, Ann M. Michels, and Steven C. Hruby, (Debtors), hereby promise to pay to the order of Alan C. Gruidl, the principal sum of one hundred thousand dollars (\$100,000), together with interest on the unpaid principal balance remaining at the rate charged to Alan C. Gruidl on the note owed by Alan C. Gruidl to Norwest Bank, N.A., a copy of such note is attached hereto as Exhibit A. If the net income of The Albatross, Inc., before owners' compensation exceeds the sum of \$150,000, then the remaining income, net of income tax, shall be paid to Alan C. Gruidl in order to reduce the principal balance of this note.

Subject to the other provisions hereof, payment of interest and principal shall be made to Alan C. Gruidl upon the same terms conditions as the Note owed by Alan C. Gruidl to Norwest Bank N.A., a copy of such note is attached hereto as Exhibit A.

This note shall be binding upon the makers, their successors and assigns. The holder of this note may at its option without notice declare this note immediately due and payable for the entire unpaid principal hereof upon or at any time after the occurrence of any of the following events: any default in the payment of this note; any default under the terms or conditions any security agreement or other note, obligation, instrument, undertaking or agreement concurrently herewith or heretofore or

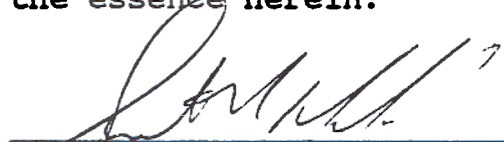
EXHIBIT

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hereafter given to or acquired and held by the holder hereof to which any maker, co-maker, endorser, surety or guarantor hereof is a party; if the holder hereof deems himself insecure; or if there is such a change in the condition or affairs, financial or otherwise, of any maker, co-maker, endorser, surety or guarantor hereof as in the option of the holder hereof increases the risk of repayment

Each maker, co-maker, endorser, surety and guarantor hereof jointly and severally agrees to pay this note and guarantees payment hereof and waives demand, presentment, protest and notice of dishonor, and consents to any extensions and renewals hereof without notice, and consents to the release by the holder hereof with or without consideration of any of them, and exonerates the holder hereof from all duty and obligation to make demand on anyone for payment of any collateral now or hereafter securing this note or to give notice to anyone of non-payment thereof or to collect or sell the same and consents to the extension, renewal, exchange, surrender or release by the holder hereof with or without consideration of any such collateral, and agrees that when or at any time after this note becomes due the holder hereof may, without notice, offset or charge this note against any account then maintained by any of them with the holder hereof or then existing between any of them and the holder hereof and to pay any deficiency, and agrees in case of any default to pay all costs of collection, including reasonable attorneys fees, and the maximum interest or late charges permitted by law. Should the


holder of this note grant a further extension of any payments hereunder, it shall not be considered as a waiver of this note nor shall it release the obligation of payment herein; time is of the essence herein.



Scott R. Michels



Ann M. Michels



Steven C. Hruby

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that The Albatross, Inc., a corporation under the laws of the State of Minnesota, hereinafter referred to as "Seller," in consideration of the sum of One Dollar and other good and valuable consideration, to him in hand paid by Two Brothers Entertainment, Inc., a Minnesota Corporation, hereinafter referred to as "Buyer," the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Buyer and his successors and assigns, forever, the following described goods, chattels, and personal property, to-wit:

SEE ATTACHED LIST

TO HAVE AND TO HOLD THE SAME, unto the Buyer, his successors and assigns, forever. And the Seller for himself, his heirs, executors, and administrators, covenants and agrees to and with the Buyer, his successors and assigns, to warrant and defend the sale of said goods, chattels, and personal property hereby made, unto the Buyer, his successors and assigns, against all and every person and persons whomsoever, lawfully claiming or to claim the same.

IN TESTIMONY WHEREOF, the Seller has hereunto set his hand this _____ day of _____, 2000.

The Albatross, Inc.

By: _____

Its: _____

EXHIBIT

G



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
RICHARD H. KAKELDEY
RENEE C. RUBISH
RYAN B. MAGNUS
STACEY R. EDWARDS JONES

PHONE: 507.625.6600

June 1, 2001

Greg and Rich Wade
1728 West Bell Road
Phoenix, AZ 85023

RE: Two Brothers Entertainment, Inc./The Albatross

Dear Greg and Rich Wade:

I have been informed by my client that you are three months past due on rent. It is further anticipated that you will not be paying June rent. Therefore, you will be a total of four months past due in rent. Additionally, you are \$35,350.48 past due on the promissory notes and obligations assumed under the contract. The promissory notes provide that Al Gruidl may accelerate the notes in the event of a default. You are hereby notified that the notes have been accelerated and due in full immediately. Your total past due amounts are broken down as follows:

- 1 The Original Stock Contract balance past due as of May 31, 2001, is \$8,185.13, with an accelerated balance of \$110,914.79.
2. The Non-Compete balance past due and owing as of May 31, 2001, is \$12,829.21, with an accelerated balance of \$221,630.16.
3. The Equipment Contract balance past due and owing as of May 31, 2001, is \$10,649.14, with an accelerated balance of \$144,644.48.
4. Additionally, the contract requires you to pay health insurance for Al Gruidl. This amount is currently \$2,000 past due.
5. The loan at Wells Fargo Bank has a past due amount of \$1,687 and an outstanding principle balance of approximately \$100,000.

EXHIBIT 2

UNION SQUARE BUSINESS CENTER • SUITE 200
201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007
PHONE: 507.625.6600 • FAX: 507.625.4002 • E MAIL: mrr-law@mrr-law.com

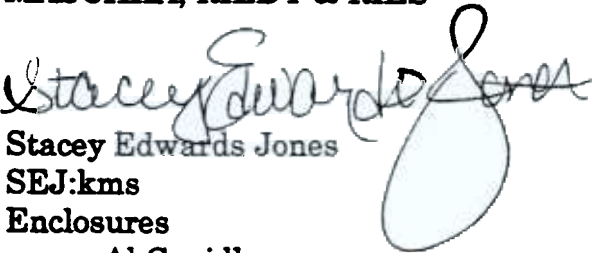
Page Two
June 1, 2001

The above notes and contracts were guaranteed not only by Two Brothers Inc., but by Rich Wade and Greg Wade personally. As such, we will be seeking payment on the contract and notes from the corporation as well as each of you individually. The security agreement provides that in the event of default, Mr. Gruidl may take possession of the assets of Two Brother's Inc. Paragraph 3 of the Sublease provides that in the event of default, you will reassign the leasehold interest back to Al Gruidl. Currently you are in default and Al Gruidl has the right to reclaim the premises.

In the event you do not pay off the contract and promissory notes or make other arrangements on or before June 4, 2001, Mr. Gruidl will be exercising his right to take back the assets and premises of the Albatross. The current balance due and owing Al Gruidl at this time is \$612,539.91 plus any unpaid rents.

Sincerely,

MASCHKA, RIEDY & RIES


Stacey Edwards Jones
SEJ:kms
Enclosures
c: Al Gruidl

GUARANTY

value received, the sufficiency of which is hereby specifically acknowledged, the undersigned, GREGORY A. WADE and RICHARD T. WADE, hereby guarantee the prompt payment when due, whether at the dates specified therein, the maturity date, or theretofore upon acceleration of maturity pursuant to the provisions hereof, of any and all indebtedness and liabilities of Two Brothers Entertainment, Inc., a Minnesota corporation, D/B/A The Albatross, to Alan C. Gruidl, under that certain Promissory Note made June 5, 1998, by Scott Michels, Ann Michels, and Steven Hruby, in the original principal sum of \$317,166 "Promissory Note"

This Guaranty is an absolute and direct guaranty of payment and is in no way conditional or contingent upon any attempt to collect from Scott Michels, Ann Michels, and Steven Hruby, under the above referenced Promissory Note. Payment under this Guaranty is secured by a security interest in favor of Alan C. Gruidl in substantially all of assets of the undersigned corporation, which security interest is evidenced by a Security Agreement dated _____, 2000. If the indebtedness under said Promissory Note in the original principal amount of \$317,166.00 is not paid by Two Brothers Entertainment, Inc. when due as aforesaid, then the undersigned agrees that he will pay the same to Alan C. Gruidl. Failure to pay any such amount by Two Brothers Entertainment, Inc., shall constitute a default and Alan C. Gruidl may exercise all of his remedies under this Guaranty, the Promissory Note, and Security Agreement, as well as the law, to collect the same from the undersigned.

EXHIBIT 3

The undersigned agrees that the Promissory Note of even date herewith in the original principal sum of \$317,166.00 may be amended, renewed, or extended, or the time of any payment


EXHIBIT

extended, or prepaid or accelerated, or any right in the provisions of the Promissory Note waived, without notice and without impairing or affecting the liabilities herein.

This Guaranty shall be binding upon the undersigned and upon his successors and assigns, and shall inure to the benefit of Alan C Gruidl, his heirs, legal representatives, and assigns.

Dated:

Gregory A. Wade

_____
Richard T. Wade

SUBLEASE AGREEMENT

This Sublease is made this _____ day of _____, 2001, by and between #1 Sun, Inc., a Minnesota corporation and Brandie-Alexander, Inc., a Minnesota corporation (hereinafter referred to as "Sublessor") and Gregory A. Wade and Richard T. Wade (hereinafter referred to as Sublessees").

The Sublessor lets to the Sublessees and Sublessees rents from Sublessor the following described premises: approximately 9,293 sq. ft, of commercial space along with the common area utilized in the general commercial space known as University Square Shopping Center, Mankato, Minnesota.

The Sublessees agree to each of the following:

1. **Payment of rent.** Pay the rent and common area maintenance as set forth in the Leases by and between #1 Sun, Inc., and David Peters dated the 1st day of June, 1995, and Brandie-Alexander, Inc., and David Peters dated the 1st day of May, 1991.
2. **Sublease.** This is a Sublease. The Sublessor's interest in the premises is as Sublessees under an underlying Leases made by David Peters as Landlord, and #1 Sun, Inc., as Tenant, dated June 1, 1995, and David Peters as Landlord, and Brandie-Alexander, Inc. dated May 1, 1991, a copies of which, initialed for identification, are attached hereto. This Sublease is expressly made subject to all the terms and conditions of the underlying Leases and does not do or omit to do anything which will breach any of its terms. If the underlying Lease is terminated this Sublease shall terminate simultaneously and any unearned rent paid in advance shall be refunded to the Sublessees, if such termination is not the result of a breach by the Sublessees of the within Sublease. The Sublessees shall assume the obligation for performance of all of the Sublessor's obligations under the underlying Lease.
3. **Amendments.** Sublessees acknowledge and accept the terms of any and all lease amendments entered into by and between Tenant and Landlord.
4. **Term.** Sublessees acknowledges that the term of this Sublease shall be for a period as provided in the Leases referred to herein provided Sublessees are not in default of any of the terms and conditions contained in the Asset Transfer Agreement by and between Scott Michels, Ann Michels, Steven Hruby and Alan Gruidl and Two Brothers Entertainment, Inc., of the duties and obligations contained in said agreements and the promissory note or notes signed commensurate therewith. In the event of default or any of the obligations by Sublessees, Sublessees hereby agree to reassign said Leasehold interests back to Sublessor as their interests appear. Sublessees acknowledge and agree that the Subleases shall terminate and be of no

EXHIBIT 4

further effect subsequent to the reassignment of said Leases.

5. **Entire Agreement.** This instrument supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them, except as otherwise provided herein.

IN WITNESS WHEREOF the Sublessor has signed and sealed this instrument on _____, 2001, the Sublessees have signed and sealed this instrument on _____, 2001.

SUBLESSOR:

SUBLESSEES:

#1 Sun, Inc.
Brandie-Alexander, Inc.

Gregory A. Wade

By: _____
ITS _____

Richard T. Wade

CONSENT OF LESSOR:

The undersigned Lessor, Roger W. Peters, hereby agrees and consents to the above Sublease to Gregory A. Wade and Richard T. Wade.

Roger W. Peters

WITNESS

UNSWORN CERTIFICATE OF SERVICE

I, Andrea M. Hauser, declare under penalty of perjury that on April 8, 2004, I caused to be served the following documents:

1. Summons; and
2. Complaint

by first-class mail and certified mail return receipt requested upon:

Gregory A. Wade
1728 West Bell Road
Phoenix AZ 85023

Richard T. Wade
14804 County Road 5, Apt. 5
Burnsville MN 55306

Officer or Managing Agent
Two Brothers Entertainment, Inc.
14804 County Road 5, Apt. 5
Burnsville MN 55306

Officer or Managing Agent
Two Brothers Entertainment, Inc.
1728 West Bell Road
Phoenix AZ 85023

and by first-class mail, postage pre-paid, upon:

Office of the U.S. Trustee
1015 U. S. Courthouse
300 South Fourth Street
Minneapolis MN 55415

Christopher M. Kennedy
Kennedy & Kennedy
99 Navaho Avenue, Suite 104
P.O. Box 3223
Mankato MN 56002-3223

FULLER, SEAVER & RAMETTE, P.A.

Executed on April 8, 2004

By: /e/ Andrea M. Hauser
Andrea M. Hauser 207469
12400 Portland Avenue South
Suite 132
Burnsville, MN 55337
(952) 890-0888